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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,444	08/18/2003	Suen Ching Yan	03-12373	7985
7590	04/09/2004			EXAMINER MORAN, KATHERINE M
Donald M. Cislo, Esq. Cislo & Thomas LLP Suite 900 233 Wilshire Boulevard Santa Monica, CA 90401-1211			ART UNIT 3765	PAPER NUMBER
DATE MAILED: 04/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/645,444	YAN, SUEN CHING
	Examiner Katherine M Moran	Art Unit 3765
<b>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</b>		
<b>Period for Reply</b>		
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>		
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>		
<b>Status</b>		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>18 August 2003</u> .		
2a) <input type="checkbox"/> This action is <b>FINAL</b> .                                    2b) <input checked="" type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.		
<b>Disposition of Claims</b>		
4) <input checked="" type="checkbox"/> Claim(s) <u>1-7</u> is/are pending in the application.		
4a) Of the above claim(s) _____ is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>1</u> is/are rejected.		
7) <input checked="" type="checkbox"/> Claim(s) <u>2-7</u> is/are objected to.		
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.		
<b>Application Papers</b>		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input checked="" type="checkbox"/> The drawing(s) filed on <u>18 August 2003</u> is/are: a) <input checked="" type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.		
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).		
11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.		
<b>Priority under 35 U.S.C. § 119</b>		
12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).		
a) <input type="checkbox"/> All    b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:		
1. <input type="checkbox"/> Certified copies of the priority documents have been received.		
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.		
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).		
* See the attached detailed Office action for a list of the certified copies not received.		
<b>Attachment(s)</b>		
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>03262004</u> .		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____.		

## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/349,255 in view of Crewe '327 and Daniels '319. Claim 1 of App. No. 10/349,255 does not recite a cap with a plurality of gores and a shade having a split configuration. Crewe teaches a cap with a plurality of gores which is a common cap configuration and also teaches a shade with a split configuration to allow the bottom edge of the shade to better conform to the wearer's upper torso.

This is a provisional obviousness-type double patenting rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crewe (U.S. 5,649,327) in view of Daniels (U.S. 4,887,319). Crewe '327 discloses the invention substantially as claimed. Crewe teaches a cap 2 comprising a crown 14 having an inner surface and an outer surface, a visor 21 having left and right edges and affixed to a front portion of the crown, and two or more shade attachment members 16,18,19 (buttonhole, hook and loop) on a band 4 at the inner surface and bottom edge of the crown near a front portion thereof (Figure 2). A pouch 7 is attached to the outer surface and bottom edge of the band 4 and has a shade 10 contained within, the shade comprising central, left side, right side portions each having an upper edge comprising one or more mating members 17 (buttons, but may also be any fasteners including snaps, zippers, hook and loop (Figure 3) located near the left and right edges of the visor. At least one mating attachment member is configured and positioned to attach to the shade attachment members during use. The pouch further comprises one or more edges defining an opening for releasing a portion of the shade, with the edges including a zippered flap for retaining the shade (col.2, lines 30-32). However, the shade 10 does not have a split configuration. Daniels '319 teaches a neck shade 10 with a split configuration as shown in Figure 1. The split shape allows the shade to better conform to the contours of the wearer's upper torso. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the pouch of Crewe with a split configuration as taught by Daniels so that the shade may better conform to the wearer's upper torso.

***Allowable Subject Matter***

5. Claims 2-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Williams (U.S. 1,635,916), Wetzel (U.S. 2,472,033), Beresic (U.S. 3,750,192), Shedd et al. (U.S. 5,081,717), Bridges (U.S. 5,701,609), Pfefferman (U.S. 5,742,944), Galigani (U.S. 6,317,892), and Pu (U.S. 6,484,323) teach relevant prior art.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (703) 305-0452. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (703) 305-1025. The official and after final fax number for the organization where this application is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Katherine Moran

Primary Examiner, AU 3765

Kmm

March 26, 2004